

## Top firm takes on poultry industry

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The South Carolina law firm suing al-Qaida and its financiers for \$ 1 trillion wants to help Oklahoma pluck millions of dollars from Arkansas poultry companies.

Suing al-Qaida is by far the biggest of the Motley Rice firm's endeavors. But its attorneys have won millions representing clients suing the tobacco and asbestos industries. Its expertise in landing favorable judgments in lawsuits over transportation-related accidents has brought in millions more.

Those victories, however, pale in comparison to the potential fruits of a class-action case filed in 2002 on behalf of the victims of the Sept. 11, 2001, terrorist attacks. That suit is against the al-Qaida terrorist group and Saudi Arabians the firm thinks financed the attacks.

Now, the firm's attention is focused on poultry firms that Oklahoma Attorney General Drew Edmondson says are fouling the Illinois River watershed.

Motley Rice and two firms in Oklahoma are helping Edmondson represent his state in its federal lawsuit against eight poultry companies with operations in Arkansas. Edmondson blames them for polluting the watershed with poultry litter.

Joe Rice, a partner in Motley Rice, is best known for his skills as a negotiator and his work to get states a \$ 246 billion settlement from tobacco companies in 1998. But he's not new to Oklahoma's dispute with the poultry industry.

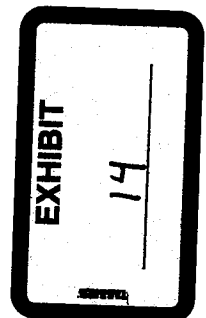
Rice was one of the 20 to 25 lawyers who represented Oklahoma last year during negotiations with the poultry companies. Those negotiations failed to reach a settlement, and Edmondson filed the federal lawsuit in June.

"I don't think anyone feared him," said Janet Wilkerson, a vice president with Decaturbased Peterson Farms, one of the companies being sued. "He fit right in with the other attorneys. He didn't stand out if you didn't know the name of Joe Rice."

The poultry attorneys know Rice and his partner Ron Motley because of the firm's legal successes.

The lawyers representing the state of Oklahoma will receive one-third of any settlement or court award as their contingency fee, according to their contract with Edmondson's office. The contract stipulates that the contingency fee plus their expenses can't exceed 50 percent of any money paid to the state by the poultry companies.

"I'm totally confident we can prove this industry is responsible for the pollution,"



Edmondson said in a telephone interview. "We can prove damage."

That's among the reasons why Edmondson wants the help of Motley Rice, one of the only firms willing to take the lead role in helping Edmondson with his fight.

**PICKING MOTLEY RICE** Edmondson said he was disturbed in 2003 when attorneys received \$ 7. 3 million of a \$ 7. 5 million settlement in the city of Tulsa's lawsuit against Arkansas poultry companies and the city of Decatur over pollution in the Eucha-Spavinaw watershed. Edmondson's promise to his constituents in the Illinois River watershed case is that a higher percentage of money paid will go toward environmental causes rather than lawyers. Charlie Price, a spokesman for Edmondson, said the attorney general's office sought help from private firms because it wasn't prepared to take on the cost of expensive litigation against the poultry industry.

Several firms expressed interest in helping Edmondson, but the number "dwindled" when the firms learned they would pay their own expenses, Edmondson said. The private law firms already have spent \$ 2 million preparing for a federal trial, he said.

"It's a big risk [for the private law firms ]," Edmondson said. "They knew it was going to be expensive, and we ended up with a consortium of lawyers who got together. In the end, they were the only ones who wanted the work."

The consortium includes Motley Rice ; Riggs, Abney, Neal, Turpen, Orbison & Lewis of Oklahoma City ; and Miller & Keffer of Tulsa. Tulsa attorney Louis Bullock also is working on the case, Edmondson said.

Using multiple law firms was the "model in the tobacco litigation," Edmondson said.

In a Jan. 17 speech to 500 farmers in Fayetteville, Arkansas Attorney General Mike Beebe described Motley Rice as "the tobacco lawyers from South Carolina." In a telephone interview, Beebe said he didn't intend it to be a negative comment toward the firm.

"I was trying to paint them in two directions," Beebe said. "They are very good lawyers who are successful in large monetary recoveries.

" But as long as it's monetary, it's much more difficult for farmers, the people in Arkansas and us to solve the environmental concerns. The more the South Carolina law firm is involved, the more difficult it is for us as a state, the more it's about the money and the less it's about the environment."

Mark A. Behrens, a partner in Shook Hardy & Bacon's Washington office, a firm that represents corporations in complex litigation, said private attorneys have different goals than Edmondson and Oklahoma residents. "One of the problems that occurs when a state hires an outside counsel is a conflict in the interest of the state and the interest of the private firm," said Behrens, who took part in a panel discussion last year with Rice at the National Asbestos Litigation Conference. "It may be in the state's interest to remediate and clean up the river and the trial lawyer wants to maximize the financial recovery. The citizens may be less interested in money and more interested in the water."

HISTORY OF SUCCESS Motley Rice's more than 60 attorneys and their 350 supporting employees have a history of huge financial settlements and courtroom victories.

They have the financial "deep pockets" to take on any of the nation's corporations, Behrens said.

Motley Rice was directed by Edmondson not to grant an interview for this story, said Sally Comollo, a spokesman for the law firm. Edmondson said he prefers to do the talking.

"I'm in total control of the litigation," he said.

Past settlements completed by Motley and Rice while they worked for a now-defunct Charleston, S. C., firm include \$ 246 billion in 1998 against four U. S. tobacco producers to be paid out to states over 25 years.

Rice is best known as the key player in that negotiated settlement, which provides money to Arkansas and other states for health-care programs. The National Association of Attorneys General honored him in 1998 with its President's Award for his work on the settlement.

Arkansas' share, which is expected to be \$ 50 million to \$ 60 million annually through 2025, was \$ 51. 6 million last year, said Chiquita Munir, executive director of the Arkansas Tobacco Settlement Commission.

"It's been good for our state," Munir said. "The state of Arkansas has really benefited from the fact that we use our tobacco settlement funds for health care."

Motley, who founded the company with Rice, became known nationally in the 1970 s for his work representing workers injured by asbestos. Asbestos cases still are part of Motley's work.

Newspaper accounts tell of Motley Rice's lawsuits on behalf of the families of pilots killed in plane crashes in Missouri and Florida, of two dozen clam farmers upset about a fuel spill that nearly wiped out clams they harvest in a 15-mile stretch of shoreline in South Carolina, and of several hundred people injured when a Norfolk Southern freight train carrying deadly chloride crashed into a train at Graniteville, S. C.

None of those transportation lawsuits worry the poultry companies as much as being lumped in with the tobacco and asbestos industries as defendants against lawsuits involving Motley Rice.

"Our product is a healthy source of protein," Peterson Farms' Wilkerson said. "We are not the tobacco industry." COST TO POULTRY COMPANIES

It's possible that the federal court in Tulsa will never take up Oklahoma's civil lawsuit against the poultry companies.

In November, Beebe asked the U. S. Supreme Court to get involved, saying the case is between the states. Beebe is asking the high court to move the dispute from federal court to the Arkansas-Oklahoma Arkansas River Compact Commission, which was created by Congress in 1973. That's the proper place for the states to address waterquality and

water-quantity issues, Beebe said.

“Oklahoma ignores the equitable and obvious mechanism to address its interstate pollutionrelated grievances,” Beebe wrote in court filings.

Most Supreme Court cases were previously heard in federal or state courts, but Beebe hopes to take advantage of an exception spelled out in the U. S. Constitution. It reads that the “Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more states.”

Edmondson disagreed in a January response to Beebe’s request, saying he’s not suing Arkansas and that Arkansas is wrongly trying to protect one of the state’s biggest industries.

The high court hasn’t decided if it will intervene.

Edmondson negotiated with the poultry industry before he filed Oklahoma’s federal lawsuit against the companies. Both sides agreed not to reveal details of the negotiations.

The companies would have survived what he proposed, Edmondson said, but he was frustrated by the fact that the companies wouldn’t pay or do as much as he wanted.

“At no time did we make a demand in settlement seeking as much as the total cost of reclamation,” Edmondson said. “We’re aware they couldn’t afford it.

“ It would work a hardship on some of the smaller companies. That makes litigation a risk more for them than for us.”

Wilkerson acknowledged it’s a big risk for Peterson Farms. The company paid more than 50 percent of the \$ 7. 5 million settlement in the Eucha-Spavinaw watershed case because it had the most poultry houses in that watershed, Wilkerson said.

“The Tulsa settlement almost closed our doors,” she said. “It set us back.”

If Oklahoma wins its lawsuit and the pattern of pay is the same as was used in the Eucha-Spavinaw settlement, Springdalebased Tyson Foods Inc. stands to pay the most.

The company owned 54. 5 percent of the poultry houses in the watershed in the first quarter of 2005. Simmons Foods Inc. in Siloam Springs had 16 percent and George’s Inc. in Springdale had 14. 4 percent.

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